PART IV

Section 1-A

CENTRAL BILLS AND REPORTS OF SELECT COMMITTEES THEREON

NOTIFICATION.

(LAW DEPARTMENT).

No. LAW 35 LCA 66, Bangalore, dated 3rd September 1966.

Ordered that the Report of the Joint Committee on the Judges (Enquiry) Bill, 1964, which has been published in the *Gazette of India*, Extraordinary, Part II, Section 2, dated the 6th April 1966, be republished in the *Mysore Gazette*, for general information.

By Order and in the name of the Governor of Mysore,

H. K. ANANTHASUBBA RAO,
Under Secy. to Govt., L. D.

LOK SABHA

The following report of the Joint Committee on the Bill to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President was presented to Lok Sabha on the 17th May, 1966 :—

Composition of the Committee

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2 Shri N. C. Chatterjee
*3 Shri Sachindra Chaudhuri

* Resigned w.e.f. 10th January, 1966.

4 Shri Homi F Daji
5 Shri R. G. Dubey
6 Shri Hari Vishnu Kamath
7 Shri Harekrushna Mahatab
†8 Shri Shankarrao Shantaram More
9 Shri Gulzarilal Nanda
10 Shri Ghanshyamlal Oza
11 Shri Tika Ram Paliwal
12 Shri Raghunath Singh
13 Shri Shivram Rango Rane
14 Shri N. G. Ranga
15 Shri Sham Lal Saraf
16 Shri Dr L. M. Singhvi
17 Shrimati Tarkeshwari Sinha
18 Shri U. M. Trivedi
19 Shri T. Abdul Wahid
20 Shri Jaganath Rao

Rajya Sabha

21 Shrimati C. Ammanna Raja
22 Shri Jaisukhlal Hathi
*23 Shri Akbar Ali Khan
24 Shri R. S. Khandekar
25 Shri Debabrata Mookerjee
*26 Shri G S. Pathak
27 Shri M. Ruthnaswamy
28 Shri P N. Sapru
29 Shri D L. Sen Gupta
*30 Shri K. K. Shah

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† Expired on the 6th March, 1966.

* Ceased to be members of the Joint Committee consequent on their retirement from Rajya Sabha with effect from the 2nd April, 1966 but were re-appointed by Rajya Sabha on the 7th April, 1966 on their re-election to that House.

DRAFTSMEN

1. Shri S. P. Sen.Varma, *Secretary, Legislative Department, Ministry of Law.*

2. Shri S. K. Maitra, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri C. P. Gupta, *Joint Secretary, Ministry of Home Affairs.*

2. Shri Mangli Prasad, *Deputy Secretary, Ministry of Home Affairs*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President was referred, having been authorised to submit the Report on their behalf, present their Report, with the Bill as amended by the Committee, annexed thereto.

2. The Bill was introduced in Lok Sabha on the 14th February, 1964. The motion for consideration of the Bill was moved by Shri Jaganath Rao, the then Deputy Minister in the Ministry of Law, on the 21st September, 1965. On the 22nd September, 1965, Shri Jaganath Rao moved a motion for reference of the Bill to a Joint Committee which was adopted on the same day.

3. Rajya Sabha discussed the motion on the 29th and 30th November, 1965 and concurred in the said motion on the 30th November, 1965.

4. The message from Rajya Sabha was reported to Lok Sabha on the 2nd December, 1965.

5. The Committee held nine sittings in all.

6. The first sitting of the Committee was held on the 4th December, 1965, to draw up their programme of work. The Committee at this sitting decided to hear evidence from associations, etc., desirous of presenting their views before the Committee and to issue a press communique inviting memoranda for the purpose. The Committee also decided to invite the views of the Supreme Court, all High Courts, all Bar Councils, the Indian Law Institute, the Indian Institute of Public Administration and the Institute of Constitutional and Parliamentary Studies, on the provisions of the Bill and to inform them that they could also give oral evidence before the Committee if they so desired.

7. Eigtheen memoranda/representations/suggestions were received by the Committee from the Supreme Court, different High Courts/associations/individuals.

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* Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 14th February, 1964.

8. The second sitting of the Committee, held on the 13th January, 1966, was adjourned immediately after adopting a condolence resolution on the passing away of the late Prime Minister Lal Bahadur Shastri.

9. The Committee at their third sitting held on the 14th January, 1966, formulated their programme of hearing oral evidence of witnesses.

10. At their fourth to sixth sittings held on the 15th and 17th January and 14th February, 1966, respectively, the Committee heard the evidence given by four associations/individuals.

11. The Report of the Committee was to be presented by the 28th February, 1966. As this could not be done, the Committee, at their sixth sitting held on the 14th February, 1966, decided to ask for extension of time for presentation of their Report upto the 31st March, 1966. Necessary motion was brought before the House and adopted on the 23rd February, 1966. At their seventh sitting held on the 9th March, 1966, the Committee decided to ask for further extension of time upto the last day of the current (Fourteenth) Session which was granted by the House on the 24th March, 1966.

12. The Committee have decided that the evidence given before them should be printed and laid on the Tables of both the Houses *in extenso*.

13. The Committee considered the Bill clause-by-clause at their eighth sitting held on the 9th May, 1966.

14. The Committee considered and adopted the Report on the 13th May, 1966.

15. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

16. *Clause 1 and enacting formula.*—The changes made therein are of a consequential nature.

17. *Clause 2*.—In view of the amendments made in clauses 3, 4 and 7, the definitions of the terms "Speaker" and "Chairman" have been inserted in the clause and for the expression "Special Tribunal", the expression "Committee" has been substituted with a view to ensuring that the Committee may not be subject to writ jurisdiction of the Supreme Court and the High Courts.

Consequential changes have accordingly been made in other clauses of the Bill.

18. *Clause* 3.—The Committee are of the view that to ensure and maintain the independence of the judiciary, the Executive should be excluded from every stage of the procedure for investigation of the alleged misbehaviour or incapacity of a Judge and that the initiation of any proceeding against a Judge should be made in Parliament by a notice of a motion. The Committee also feel that no motion for presenting an address to the President praying for the removal of a Judge should be admitted unless the notice of such motion is signed in the case of a motion in the Lok Sabha, by not less than one hundred members of that House and in the case of a motion in Rajya Sabha, by not less than fifty members of that House. Further, the Committee are of the opinion that the Speaker or the Chairman or both, as the case may be, may, after consulting such persons as they think fit, and after considering such materials, as may be available, either admit or reject the motion and that if they admit the motion, then they should keep the motion pending and constitute a Committee consisting of three members, one each to be chosen from amongst the Chief Justice and other Judges of the Supreme Court, Chief Justices of the High Courts and distinguished Jurists, respectively.

Sub-clauses (1) and (2) of the clause have been redrafted accordingly to provide for these matters and also to provide for the manner of disposal of notices of such motions when tabled in either House or in both Houses of Parliament.

The amendments made in sub-clauses (5) and (8) are consequential and clarificatory in nature.

19. *Clause* 4.—Consequent on the amendments made in clause 3, sub clauses (2) and (3) of the clause have been substituted to provide for the submission of the report of the investigating Committee to the Speaker or the Chairman, or both, as the case may be, and its being caused to be laid before both the Houses of Parliament.

20 *Clause* 6.—The Committee feel that if the investigating Committee exonerates the Judge, no further action should be taken on the motion. If, however, the report of the investigating Committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then the motion, together with the report of the investigating Committee, should be taken up for consideration by the House or Houses in which it

is pending. If the motion is adopted by each House in accordance with the provisions of clause (4) of article 124 or, as the case may be, in accordance with that clause read with article 218, of the Constitution, then the misbehaviour or incapacity of the Judge should be deemed to have been proved and an address for the removal of that Judge should be presented to the President by each House in the prescribed manner.

The clause has been substituted accordingly.

21. *Clause* 7.—The Committee are of the view that instead of the Central Government, a Joint Committee of Parliament, consisting of fifteen members of whom five to be nominated by the Chairman and ten to be nominated by the Speaker, should be constituted and that Committee should have the power to make rules for carrying out the purposes of the Act. The rules so made should be published in the Gazette after their approval by the Chairman and the Speaker.

The clause has been substituted accordingly.

22. The Committee recommend that the Bill, as amended, be passed.

NEW DELHI;
The 13th May, 1966.

S. V. KRISHNAMOORTHY RAO,
Chairman,
Joint Committee.

MINUTES OF DISSENT

I

I am constrained to append this minute of dissent because in spite of certain fundamental changes on which I and some other esteemed colleagues in the Committee had insisted and which have been accepted, the Bill as it emerges from the Joint Select Committee is a somewhat inelegant and cumbersome piece of legislation. In particular, my dissociation and dissent is directed against clause 3 (1) of the Bill which sets forth the procedure for notifying a motion for presenting an address to the President praying for the removal of a Judge and against clause 3 (2) which provides for the constitution of a Committee which would make an investigation into the grounds on which the removal of a Judge is prayed for.

2. When the Judges (Inquiry) Bill, 1964 was discussed in the Lok Sabha, some of us had strenuously opposed clause 3 (1) of the Bill as introduced in Lok Sabha on 14th February, 1964. Clause 3 (1) of the Bill was in the following terms:

> "If the President, on receipt of a report or otherwise, is of opinion that there are good grounds for making an investigation into the misbehaviour or incapacity of a Judge, he may constitute a Special Tribunal for the purpose of making such an investigation and forward the grounds of such investigation to the Special Tribunal."

Clauses 4 and 6 of the original Bill were as follows :—

> "4. (1) Subject to any rules that may be made in this behalf, the Special Tribunal shall have power to regulate its own procedure in making the investigation and shall give a reasonable opportunity to the Judge of cross-examining witnesses, adducing evidence on behalf of the defence and of being heard.
>
> (2) After the close of the investigation, the Special Tribunal shall submit its report to the President stating therein its findings on each of the charges separately with such observations on the whole case as it may think fit.
>
> (3) The President shall cause the report submitted under sub-section (2) to be laid before each House of Parliament."

"6. Each House of Parliament may take into consideration the report of the Special Tribunal in relation to the misbehaviour or incapacity of a Judge and if the Judge is to be removed from his office on the ground of proved misbehaviour or incapacity, it shall present an address to the President for such removal through the Speaker of the House of the People, or the Chairman of the Council of States, as the case may be."

3. The main objection to clause 3 (1) and the sequence of steps adumbrated in clauses 4 and 6 of the original Bill was that it would not be in consonance with our Constitution to divest the Parliament of its powers under Article 124 and that the vesting of powers of initiating investigation and of constituting the Special Tribunal in the President (and through him in the Council of Ministers) would be repugnant to the independence of the judiciary. In repelling and rejecting the idea of executive initiative and intervention in instituting investigation into the conduct of Judges and by preserving the parliamentary power in respect of impeachment of Judges, the Joint Select Committee has made a contribution of enduring significance to the institutional framework of our Constitution.

4. My regret and disappointment, however, arise from the fact that the substitute procedures embodied in the present Bill are ungainly, inelegant and pointless and savour somewhat of a lack of confidence in the Parliament.

5. Clause 3 (1) in the present Bill requires that an impeachment motion should, in the case of a notice given in the House of the People, be signed by one hundred members of that House In the case of a notice given in the Council of States, the prescribed number of signatories is fifty. If I may say so with respect, the provision is in conception and in effect an institutional excess. It means that even a preliminary notice would necessitate a kind of a campaign among Members of Parliament, who may themselves want to hold a preliminary investigation of their own before subscribing to such a notice. To secure the sponsorship of one hundred members of Lok Sabha or of fifty members of Rajya Sabha, a member, left to his own individual resources, would perhaps have to circulate memoranda and statements and other evidence. He would have to convass and to pamphleteer. He would have to repeat his grounds of impeachment from member to member,

inside as well as outside Parliament House resulting in a distasteful din of whispers and other unseemly complications. And this, most certainly will not add to the dignity of the Parliament or that of the judiciary.

6. I, for one, fail to comprehend the rationale or the proposed requirement of one hundred or fifty signatories (as the case may be) for a notice of motion. It puts an inordinate measure of faith in a signature campaign and does not consider the intrinsic persuasiveness or otherwise of the allegations to be a sufficient basis. The procedure extinguishes private members' rights to raise and initiate such issues, and in that context, it is alien to parliamentary procedure. Moreover, the requirement is plainly redundant in view of the fact that clause 3 (1) itself provides that after a notice of a motion is given,

> "...then, the Speaker or as the case may be, the Chairman may, after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him either admit the motion or refuse to admit the same.'

I would have thought that this power of the Speaker to admit the motion or to refuse to admit the same should suffice as a safeguard. As Shri M. N. Kaul pointed out in his illuminating testimony : "Speaker Patel put it in those early days when he laid the foundation of parliamentary procedure in India that the most fundamental power of the Speaker is to admit a motion. Nothing can come before Parliament unless the Speaker admits it That power is final and cannot be questioned. You can remove the Speaker but you cannot question his decision whether a motion should be adimitted or not Until a Member gives notice, the Speaker has no powers, but the moment a member gives notice, all the powers of the Speaker come into play and then he has to exercise those powers with great skill and caution and for the public good." The present Bill provides both for a specified number of sponsoring signatories and for the Speaker's final discretion to admit or to refuse to admit a motion. I personally think that the Speaker's power to admit or refuse to admit provides an adequate and satisfactory safeguard, and to seek to fortify it any further is like wearing (obsessively and pessimistically) a pair or suspenders in addition to a belt round the waist. Even if a specified number were considered a pre-requisite safeguard, the requirement of one hundred sponsoring signatories

in the case of Lok Sabha and of fifty in the case of Rajya Sabha is excessive. As I have pointed out earlier, the requirement, in the progress of its op-ration, would be embarrass ng and unseemly. Once there are a hundred (in the case of Lok sabha) or fifty (in the case of Rajya Sabha) sponsoring signatures, the exercise of the Speaker s power to admit or to refus- to admit will be vulnerable, because the considerations of the intrinsic merit of the motion and the materials on which it is based will tend to recede into the background against the not inconsiderable weight of nearly one-fifty of the total memebership of the House subscribing to a notice of a motion.

7. I may mention here that this excessive concern for providing impregnable safeguards is not justified by past experience. As Shri Kaul told the Committee, no more than three cases under Article 124 of the Constitution came to Lok Sabha in all these years, and only one motion ever succeeded in gaining admission. As one who sponsored that motion which was admitted and inscribed on the order paper, I am intimately familiar with the difficult and prolonged precautionary mechanics preceding the admission of the motion by the Speaker. Every word of the motion, every syllable and comma, was carefully put in ; the grounds mentioned in the motion had been closely and critically studied. Only after the Speaker was fully satisfied was the motion admitted. Describing the concatenation of events in that particular case, Shri Kaul observed :

> .....One of your colleagues will be able to give all the facts; I am concerned only with the procedural aspects and what happened so far as the Speaker is concerned. We showed all the precedents and advised him as to how the matter stood. We said that if a motion in regard to this is put on the order paper, we have to see that every word, every comma, every syllable of that motion is *prima facie* shown to have a basis. Otherwise, the Speaker will not put it down on the order paper, it will not see the light of day, it will not come before Parliament. I should like to correct the impression.....that the moment a Member shoots a Notice..... the whole thing may be made public. There is the able screening activity by the Speaker in this matter and he looks into it personally..... So for as the judiciary is concerned,

Parliment has been most careful, and very few notices have come ; and those that have been given have been absolutely clear notices.....In this particular case, the Member concerned was in the fortunate position of citing chapter and verse. Because he tried every recourse, he was in long and continuous correspondence with the Minister, concerned, and everything he puts down in his motion was authenticated by a ministerial statement.....Or it was public knowledge and about which he was prepared to satisfy the Speaker."

Clearly, the apprehensions and the anxiety which are invoked or conjured to justify the battlements of an impregnable fortress in this case are not founded in past experience. In fact Parliament has itself been a bastion of the independence of the judiciary and this is as it should be.

8. Indeed, if precaution is to be interposed between a notice by a Member and the admission of the motion by the Speaker, it could be done more appropriately by a referral of the matter to a Judiciary Committee of one or both Houses. Such a Committee could screen and scrutinise the grounds of a motion praying for the removal of a judge and could report to the Speaker if, *Prima facie* the motion is admissible. This would secure closer and more considered scrutiny than the fanfare of one hundred (in the case of Lok Sabha) or fifty signatures (in the case of Rajya Sabha). Alternatively, the required number of sponsoring signatories should be considerably reduced. I may make it clear that this second alternative meets only with my reluctant concurrence and not with my wholehearted support.

9. Regarding the constitution of the investigating Committee, I may cite Shri M. C. Setalvad who pointed out that in the U K., the U.S A., Australia and Canada, the task of investigation is entrusted either to the House as a whole or to its Committee. In this connection, Shri Setalvad had this to say in his evidence before the Committee :—

> "The main matter is, even if the Tribunal is to be appointed and if legislation is thought necessary for that purpose, the legislation should provide that the Tribunal should come in at the option of the House after a motion has been initiated in the House and the House considers an investigation necessary. It must be the House which must primarily decide whether an investigation should

take place and if so by what agency. It may be that a case may be so clear on a motion in the House, on investigation by the Speaker, that no investigation may be necessary. Or the charge may be so frivolous .....that the house may at once form the view that....it is a frivolous charge, it need not be investigated at all. All these functions are functions of the House ..... If it chooses to take..... the course of making an inquiry, again it should be open to it to choose the method of the enquiry. It may make an enquiry by a Committee of both the Houses or it may make the enquiry by a Committee of the whole Houses as has been done in some countries or in some other manner; and if the legislature may well provide that in the event of the House choosing to make an enquiry by a tribunal—the tribunal may consist of X,Y.Z,—such a provision would be an optional provision of which the House may take advantage if it so desires, but not necessarily."

10. The present Bill seeks to provide only the modality of a tribunal clothed in the nomenclature of a Committee. The Committee contemplated in the Bill may well be considered a tribunal or an "authority" within the meaning of Articles 226 and 227 of the constitution, rendering its work subject to judicial review and supervision. What is more, the Parliament is not left with any choice in the matter and the procedure of the parliamentary committee has been wholly excluded. With this I am not in agreement.

11. In both these matters in respect of which I have dissented from my esteemed colleagues in the Joint Select Committee, there appears to be an imprint on the provisions of the Bill of the now defunct Burmese Constitution, which provided that a notice of such a resolution should be signed by not less than one-fourth of the total membership of either Chamber of Parliament and further that the charge would be investigated by a special tribunal (S.113 of the Burmese Constitution). In the Burmese case, the special tribunal was to consist of the president or his nominee and the Speakers of the Chamber of nationalities and the Chamber of Deputies. I feel that the Burmese analogue is neither inspiring nor, instructive, and that the more highly evolved procedures of other democratic constitutions which have been tried and tested for centuries would have served us better.

12. Before I conclude, I would like to emphasize that I yield to none in my profound respect for our judiciary and in my concern for the preservation of its independence and its exalted status. I feel that the suggestions I have made would be far more conducive to judicial integrity and independence and to the evolution of a more consistent and harmonious framework of institutions and procedures under the Constitution

NEW DELHI;
The 16th May 1966.

L. M. SINGHVI,

I agree with the dissent note of Dr. L. M. Singhvi on clause 3 of the Judges (Inquiry) Bill 1964, for the same reasons.

NEW DELHI:
The 16th May 1966.

HOMI F. DAJI.

Clause 3 (1) (a) and (b)

III

I do not agree with the numbers 100 and 50, respectively mentioned in the above sub-clauses. They are too excessive and will defeat the very purpose of the Bill. The number of members of Lok Sabha and Rajya Sabha according to me should be 50 and 25, respectively.

NEW DELHI;
The 16th May, 1966

R. S. KHANDEKAR.

IV

The Bill, as originally introduced in the Lok Sabha in 1964 and moved for consideration in 1965 after having been in cold storage for over eighteen months, was marked by several undesirable features, the most obnoxious being the power sought to be vested in the Executive to initiate an inquiry into the alleged misbehaviour

or incapacity of a Judge. When, after resurrecting, or rather, defreez ng the B ll, I moved that, constitutionally and otherwise impo:tant as it was, it be referred to a Select Committee, my motion was at first resisted by Government ; it is however a matter for gratification that mounting pressure in the House compelled Government to accept it, and subsequently the Minister moved a motion for reference of the Bill to a Joint Committee.

2. I am glad to state that the Committee has transf rmed the Bill beyond recognition, and rightly so : the Executive is no longer in the picture, except at the very last stage of the Presidential imprimature on the address by Parliament which has now been reinvested with n cessary and adequate powers in conformity with the spirit and letter of the Constitution. This metamorphosis of the Bill reinforces, once again, the plea which I have often made in the House that all Bills, other than those of a routine or minor character, should as a rule be referred to a Select or Joint Committeel

3. Nevertheless there is scope for improvement or amendment. Clause 3 provides that the notice of a motion for presenting an address to the President praying for the removal of a Judge shall be signed by not less than one hundred members of the Lok Sabha, or not less than fifty members of the Rajya Sabha. In view of this stringent stipulation which will serve to safeguard a member of the higher Judiciary, the last bastion of democracy, against any unfair proceeding or an unseemly smear-campaign in Parliament, it should be provided that the Speaker or Chairman, as the case may be, shall *ipso facto* admit the motion, or if the option to admit or not to admit is allowed to remain with the Speaker and Chairman, the number of the members required to back the notice of motion may be substantially reduced In any case, where the Speaker or Chairman refuses to admit the motion, the grounds for such refusal shall be recorded in writing.

4. There is no valid reason why the word "Tribunal" should be substituted by the word "Committee". I agree that we should be reasonably cautious. even considerate, in this matter of an inquiry against a Judge, but we need not be squeamish. Once an nquiry or investigation has been set in motion, the word "Comittee" in connexion therewith is somewhat inappropriate ; the word "Commission" is perhaps better, but as it has a special connotation it is ruled out. I, therefore, certainly prefer the word

"Tribunal" which is by no means malodorous or objectionable in this particular context.

5. It should be provided that on the presentation of an address to the President praying for the removal of a Judge, the President shall remove the Judge from office forthwith.

NEW DELHI;
The 16th May, 1966.

HARI VISHNU KAMATH.

Bill No. 5-B of 1964

THE JUDGES (INQUIRY) BILL, 1964.

(AS REPORTED BY THE JOINT COMMITTEE).

[Words side lined or underlined indicate the amendments suggested by the Committee; a sterisks indicate omissions.]

BILL

to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President.

BE it enacted by Parliament in the Seventeenth Year of the Republic of India as follows.—

1 *Short title and commencement.*—(1) This Act may be called tho Judges (Inquiry) Act, 1966.

(2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(*a*) "Chairman" means the Chairman of the Council of States ;

(*b*) "Committee" means a committee constituted under section 3 ;

(c) "Judge" means a Judge of the Supreme Court or of a High Court and includes the Chief Justice of India and the Chief Justice of a High Court ;

(d) "prescribed" means prescribed by rules made under this Act ;

(*e*) "Speaker" means the Speaker of the House of the People.

* * * *

3. *Investigation into misbehaviour or incapacity of Judge by Committee.*—(1) If notice is given of a motion for presenting an address to the President praying for the removal of a Judge signed,—

(*a*) in the case of a notice given in the House of the People by not less than one hundred members of that House ;

(*b*) in the case of a notice given in the Council of States by not less than fifty members of that Council,

then, the Speaker or, as the case may be, the Chairman may, after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him either admit the motion or refuse to admit the same.

(2) If the motion referred to in sub-section (1) is admitted, the Speaker or, as the case may be, the Chairman shall keep the motion pending and constitute, as soon as may be, for the purpose of making an investigation into the grounds on which the removal of a Judge is prayed for, a Committee consisting of three members of whom—

(*a*) one shall be chosen from among the Chief Justice and other Judges of the Supreme Court ;

(*b*) one shall be chosen from among the Chief Justices of the High Courts ; and

(*c*) one shall be chosen from among persons who are, in the opinion of the Speaker or, as the case may be, the Chairman, distinguished jurists :

Provided that where notices of a motion referred to in sub-section (1) are given on the same day in both Houses of Parliament, no Committee shall be constituted unless the motion has been admitted in both Houses and where such motion has been admitted in both Houses, the Committee shall be constituted jointly by the Speaker and the Chairman :

Provided further that where notices of a motion as aforesaid are given in the Houses on different dates, the notice which is given later shall stand rejected.

(3) The Committee shall frame definite charges against the Judge on the basis of which the investigation is proposed to be held.

(4) Such charges together with a statement of the grounds on which each charge is based shall be communicated to the

Judge and he shall be given a reasonable opportunity of presenting a written statement of defence within such time as may be specified in this behalf by the Committee.

(5) Where it is alleged that the Judge is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and the allegation is denied, the Committee may arrange for the medical examination of the Judge by such Medical Board as may be appointed by the Speaker or, as the case may be, the Chairman or, where the Committee is constituted jointly by the Speaker and the Chairman, by both of them, for the purpose and the Judge shall submit himself to such medical examination within the time specified in this behalf by the Committee.

(6) The Medical Board shall undertake such medical examination of the Judge as may be considered necessary and submit a report to the Committee stating therein whether the incapacity is such as to render the Judge unfit to continue in office

(7) The Committee may, after considering the written statement of the Judge and the medical report, if any amend the charges framed under sub-section (3) and in such a case, the Judge shall be given a reasonable opportunity of presenting a fresh written statement of defence.

(8) The Central Government may, if required by the Speaker or the Chairman, or both, as the case may be, appoint an advocate to conduct the case against the Judge.

4. *Report of Committee.*—(1) Subject to any rules that may be made in this behalf, the Committee shall have power to regulate its own procedure in making the investigation and shall give a, reasonable opportunity to the Judge of cross-examining witnesses adducing evidence * * * and of being heard in his defence.

(2) At the conclusion of the investigation, the Committee shall submit its report to the Speaker or, as the case may be, to the Chairman or where the Committee has been constituted jointly by the Speaker and the Chairman, to both of them, stating therein its findings on each of the charges separately with such observations on the whole case as it thinks fit.

(3) The Speaker or the Chairman or both of them shall cause the report submitted under sub-section (2) to be laid, as soon

as may be, respectively before the House of the Pepole and the Council of States.

5. Powers of Committee.—For the purpose of making any investigation under this Act, the Committee shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, (5 of 1908) in respect of the following matters, namely :—

(*a*) summoning and enforcing the attendance of any person and examining him on oath ;

(*b*) requiring the discovery and production of documents ;

(*c*) receiving evidence on oath ;

(*d*) issuing commissions for the examination of witnesses or documents ;

(*e*) such other matters as may be prescribed.

6. Consideration of report and procedure for presentation of an address for removal of judge.—(1) If the report of the Committee contains a finding that the Judge is not guilty of any misbehaviour or does not suffer from any incapacity, then, no further steps shall be taken in either House of Parliament in relation to the report and the motion pending in the House or the Houses shall stand rejected.

(2) If the report of the Committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then, the motion referred to in sub-section (1) of section 3 shall, together with the report of the Committe, be taken up for consideration by the House or Houses in which it is pending.

(3) If the motion is adopted by each House of Parliament in accordance with the provisions of clause (4) of article 124 or, as the case may be, in accordance with that clause read with article 218, of the Constitution, then, the misbehaviour or incapacity of the Judge shall be deemed to have been proved and an address praying for the removal of the Judge shall be presented in the manner prescribed to the President by each House of Parliament in the same session in which the motion has been adopted.

7. Power to make rules.—(1) There shall be constituted a Joint Committee of both Houses of Parliament in accordance with the provisions hereinafter contained for the purpose of making rules to carry out the purposes of this Act.

(2) The Joint Committe shall consist of fifteen members of whom ten shall be nominated by the Speaker and five shall be nominated by the Chairman.

(3) The Joint Committee shall elect its own Chairman and shall have power to regulate its own procedure.

(4) Without prejudice to the generality of the provisions of sub-section (1), the Joint Committee may make rules to provide for the following among other matters, namely :—

(*a*) the manner of transmission of a motion adopted in one House to the other House;

(*b*) the manner of presentation of an address to the President for the removal of a Judge;

(*c*) the travelling and other allowances payable to the members of the Committee and the witnesses who may be required to attend such Committee.

(*d*) the facilities which may be accorded to the Judge for defending himself;

(*e*) any other matter which has to be or which may be provided for by rules or in respect of which provision is, in the opinion of the Joint Committee, necessary.

(5) Any rules made under this section shall not take effect until they are approved and confirmed both by the Speaker and the Chairman and are published in the Official Gazette, and such publication of the rules shall be conclusive proof that they have been duly made.

S. L. SHAKDHER,
Secretary.

Printed by the Director of Printing, Sty. & Publications at the Govt. Press, B'lore